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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant: **Richard HULL et al.**) Examiner: Wayne Huu CAI
Serial No.: **10/635,925**) Art Unit: 2681
Filed: August 5, 2003) Our Ref: B-5190 621139-0
For: "RETRIEVING MEDIA ITEMS TO A) 300204853-2 US
MOBILE DEVICE") Date: October 12, 2006
)) Re: *Appeal to the Board of Appeals*

BRIEF ON APPEAL

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an appeal from the rejection dated April 6, 2006, for the above identified patent application. This Appeal Brief is being timely filed in reply to the Notification of Non-Compliant Appeal Brief mailed on September 22, 2006, a response to which is initially due by October 22, 2006, and is intended to replace the Appeal Brief previously submitted on September 6, 2006 in support of the Notice of Appeal filed on July 6, 2006. If required, please deduct the amount of \$500.00 for the fee set forth in 37 C.F.R. 1.17(c) for submitting this Brief from deposit account no. 08-2025.

REAL PARTY IN INTEREST

The real party in interest to the present application is Hewlett-Packard Development Company, LP, a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences related to the present application.

STATUS OF CLAIMS

Claims 1-7, 9-22, and 24-30 are the subject of this Appeal and are reproduced in the accompanying appendix. Claims 8, 23, and 31-32 have been canceled without prejudice.

STATUS OF AMENDMENTS

No Amendment After Final Rejection has been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

The invention claimed in claim 1 is directed to a method of retrieving a data item to a mobile device (31) carried by a first user (30) visiting a real-world space (10), the data item being available from a service system (35) to mobile devices of users visiting the space, the method comprising (a) keeping a record on an on-going basis of which mobile devices in said space, if any, hold or are likely to be holding the data item; (b) seeking to retrieve the data item to the first user's mobile device by requesting transfer only from mobile devices that, according to said record, hold or are likely to be holding the data item; and (c) in the event that (b) is unsuccessful, retrieving the data item to the first user's mobile device by transfer from the service system (p. 10 l. 16 – p. 12 l. 11, Figs. 1-6).

The invention claimed in claim 14 is directed to a method of retrieving a data item to a mobile device (31) carried by a first user (30) visiting a real-world space (10), the data item being one of a plurality of data items available from a service system (35) to mobile devices of users visiting the space, each one of said plurality of data items having a respective associated location in said space, the method comprising (a) seeking to retrieve the data item to the first user's mobile device by transfer from another mobile device in said space; and (b) in the event that (a) is unsuccessful, retrieving the data item to the first user's mobile device by transfer from the service system; the method further comprising an on-going process in which said space is treated as divided into zones and, for each zone, upon a mobile device exiting the zone, it transfers the data items it holds that have associated locations in the zone being exited to devices,

if any, still in said zone to increase the likelihood of (a) being successfully effected from a mobile device in the same zone as the first-user's mobile device (p. 10 l. 16 – p. 12 l. 11, Figs. 1-6).

The invention claimed in claim 16 is directed to an arrangement for retrieving a data item to a mobile device (31) carried by a first user (30) visiting a real-world space (10), the data item being available from a service system (35) to mobile devices of users visiting said space, the arrangement comprising record means for keeping an on-going record of which mobile devices, if any, hold or are likely to be holding the data item; first retrieval means for seeking to retrieve the data item to the first user's mobile device by transfer from another mobile device and including enquiry means for carrying out an enquiry limited to mobile devices that, according to said record, hold or are likely to be holding the data item; second retrieval means for retrieving the data item to the first user's mobile device by transfer from the service system; and control means for organising retrieval of the data item by first causing the first retrieval means to seek to retrieve the data item and then, if this is unsuccessful, causing the second retrieval means to retrieve the data item (p. 8 l. 28 – p. 10 l. 4, Figs. 1-6).

The invention claimed in claim 29 is directed to an arrangement for retrieving a data item to a mobile device (31) carried by a first user (30) visiting a real-world space (10), the data item being one of a plurality of data items available from a service system (35) to mobile devices of users visiting the space, each one of said plurality of data items having a respective associated location in said space, the arrangement comprising first retrieval means for seeking to retrieve the data item to the first user's mobile device by transfer from another mobile device; second retrieval means for retrieving the data item to the first user's mobile device by transfer from the service system; control means for organising retrieval of the data item by first causing the first retrieval means to seek to retrieve the data item and then, if this is unsuccessful, causing the second retrieval means to retrieve the data item; and transfer means for executing an on-going process in which said space is treated as divided into zones and, for each zone, upon a mobile device exiting the zone, it transfers the data items it holds that have associated locations in the zone being exited to devices, if any, still in said zone to increase the likelihood of the data item being successfully retrieved from a mobile device in the same zone as the first-user's mobile device (p. 8 l. 28 – p. 10 l. 4, Figs. 1-6).

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Issue 1: Whether claims 11 and 12 are particular and distinct in accordance with 35 U.S.C. 112, second paragraph.

Issue 2: Whether claims 1-2, 4, 9-12, 15-17, 19, 24-27 and 30 are patentable under 35 U.S.C. 103(a) over U.S. Pat. No. 6,477,353 to Honda et al. in view of U.S. Pat. No. 6,847,823 to Lehikoinen et al.

Issue 3: Whether claims 3, 5-7, 18 and 20-22 are patentable under 35 U.S.C. 103(a) over Honda in view of Lehikoinen and further in view of U.S. 2002/0161666 to Fraki et al.

Issue 4: Whether claims 13, 14, 28 and 29 are patentable under 35 U.S.C. 103(a) over Honda in view of Lehikoinen and further in view of U.S. 2004/0027619 to Sato et al.

Appellants note that for each ground of rejection which Appellants contest herein and which applies to more than one claim, such additional claims, to the extent separately identified and argued below, do not stand or fall together.

ARGUMENT

Issue 1: Whether claims 11 and 12 are particular and distinct in accordance with 35 U.S.C. 112, second paragraph.

In section 4 of the Office Action of April 6, the Examiner rejects claims 11 and 12 under 35 USC 112 for allegedly lacking sufficient antecedent basis for the term “said enquiry.” Appellants respectfully disagree. Claims 11 and 12 depend from claim 1, and specifically refer back to part (b) of claim 1, which recites: “(b) seeking to retrieve the data item to the first user's mobile device by requesting transfer only from mobile devices that, according to said record, hold or are likely to be holding the data item.” Clearly, “said enquiry” refers to the recitation in claim 1 of “requesting transfer” and no skilled reader reading claims 11 and 12 would have any margin of doubt as to which enquiry these claims refer to. Appellants thus respectfully request that this rejection be overturned on appeal.

Issue 2: Whether claims 1-2, 4, 9-12, 15-17, 19, 24-27 and 30 are patentable under 35 U.S.C. 103(a) over U.S. Pat. No. 6,477,353 to Honda et al. in view of U.S. Pat. No. 6,847,823 to Lehikoinen et al.

In section 6 the Examiner rejects claims 1-2, 4, 9-12, 15-17, 19, 24-27 and 30 as being unpatentable under 35 U.S.C. 103(a) over U.S. Pat. No. 6,477,353 to Honda et al. in view of U.S. Pat. No. 6,847,823 to Lehikoinen et al. In particular, with regards to claim 1, the Examiner opines that Honda discloses all claimed limitations with the exception of (c) in the event that (b) is unsuccessful, retrieving the data item to the first user's mobile device by transfer from the service system, that Lehikoinen discloses precisely this limitation, and that the skilled person would have found it obvious "to improve the method of retrieving the data item by having an alternative option to retrieve data if the first option fails." With all due respect, Appellants couldn't disagree more.

With particularity, and contrary to the Examiner's assertion, Honda does not disclose seeking to retrieve the data item to the first user's mobile device by requesting transfer only from mobile devices that, according to said record, hold or are likely to be holding the data item. The Examiner alleges that Honda discloses this at col. 7 ll. 9-17, which in the Examiner's view "teaches information is transferred to the mobile station C605 via the mobile stations other than the stations A601 and B603 means that other mobile stations that are holding or likely to be holding the data item that is needed to transfer to mobile station C605." This is an incorrect reading of Honda. The passage cited by the Examiner reads:

In FIG. 6, the mobile stations A601 and B603 are within an area where the mobile stations are crowded closely, and from one of the mobile stations A601 and B603, no information from the same information origin is transferred to the mobile station C605 in order to reduce the communication quantity. It is satisfactory that the information is transferred to the mobile station C605 via the mobile stations other than the stations A601 and B603.

To say that it is a stretch from the above to the claimed requesting transfer only from mobile devices that, according to said record, hold or are likely to be holding the data item, is quite an understatement.

Honda is directed to a method for transmitting information from an origin to multiple mobile devices that controls the distance from the origin that the information is allowed to propagate as well as the length of time. The preferred environment for this method is in a store, where sale information can be transmitted to users within a selected area around the store. What is important to understand about Honda is that there is absolutely no provision in the disclosed method and system for the information source to interact with a mobile device and request information. Turning back to the passage cited by the Examiner, a read of the entire paragraph reveals that all Honda is disclosing is a way of reducing redundancy of transmitted information items – which can be a problem in a system lie Honda's where, unlike in Appellants' system, the information source has no idea to what mobile devices any information item might propagate as there is no two-way communication between the mobile devices and the information source. In Honda, the source sends out all information to all nearby mobile devices, and it is each particular mobile device that then filters through the received information and decides which items to display to its user and which items to discard. The above passage discusses one way of minimizing the same information item being transmitted to the same mobile device by multiple other devices, thereby unnecessarily increasing the amount of information traffic:

The communication controller 15 selects the information to be transmitted. Specifically, the communication controller 15 determines for each information whether or not the information is to be transmitted. This processing is conducted in order to limit the propagation area of the information according to the distance from the information origin and the time as described above. In addition, since it is impossible to designate the communication route because of the communication conducted in the state where the locations of the mobile station and the base

station are unknown, it is necessary to avoid the occurrence of a situation where the communication quantity is increased due to the overlapping of the transfer paths originating from high densities of both of the mobile stations and base stations. This situation is illustrated in FIG. 6, for example. In FIG. 6, the mobile stations A 601 and B 603 are within an area where the mobile stations are crowded closely, and from one of the mobile stations A 601 and B 603, no information from the same information origin is transferred to the mobile station C 605 in order to reduce the communication quantity. It is satisfactory that the information is transferred to the mobile station C 605 via the mobile stations other than the stations A 601 and B 603.

In view of the preceding, Appellants respectfully submit that Honda and Lehikoinen in combination fail to disclose all claimed limitations. For this reason, Appellants also traverse the Examiner's holding of obviousness for failing to set forth where the prior art provides the required reasonable expectation of success. "The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure." MPEP §2142. In the instant case, such reasonable expectation of success is clearly missing in view of the missing claim limitations – how can one reasonably expect success if provided with less than a complete teaching of the expected invention?

Finally, Appellants traverse the Examiner's proffered motivation for attempting the alleged combination of Honda and Lehikoinen. "[T]here must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." MPEP §2142. Furthermore, "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some *rational underpinning* to

support the legal conclusion of obviousness.” *In re Leonard Kahn*, 04-1616, *p. 15 (Fed. Cir., March 22, 2006) [emphasis added]. The Examiner’s vaporous allusion to “improve the method of retrieving the data item by having an alternative option to retrieve data if the first option fails” is devoid of any support in either reference – where do either of Honda or Lehikoinen even mention the possibility of their respective method failing and thus for the desirability for an improvement in the guise of an alternative method of retrieving data?

Appellants thus respectfully submit that the Examiner has failed to meet any of the three requirements for a proper 35 USC 103 obviousness rejection, and for this reason request that the Examiner be overturned on appeal and claim 1 be passed to issue.

claims 1-2, 4, 9-12, 15-17, 19, 24-27 and 30

Appellants further submit that the above discussion is equally probative of the nonobviousness of claim 16 which recites, *inter alia*, first retrieval means for seeking to retrieve the data item to the first user's mobile device by transfer from another mobile device and including enquiry means for carrying out an enquiry limited to mobile devices that, according to said record, hold or are likely to be holding the data item. As fully set forth above, neither Honda nor Lehikoinen teach such retrieval means, and thus Appellants respectfully submit that claim 16 is also novel and nonobvious over the art on record.

Claims 2, 4, 9-12 and 15 depend from claim 1, and claims 17, 24-27 and 30 depend from claim 16. In view of the above discussion, it is submitted that claims 1 and 16 are allowable, and for this reason claims 2, 4, 9-12, 15, 17, 19, 24-27 and 30 are also allowable at least based on their dependency.

Issue 3: Whether claims 3, 5-7, 18 and 20-22 are patentable under 35 U.S.C. 103(a) over Honda in view of Lehikoinen and further in view of U.S. 2002/0161666 to Fraki et al.

In section 6 the Examiner rejects claims 3, 5-7, 18 and 20-22 as being unpatentable under 35 U.S.C. 103(a) over Honda in view of Lehikoinen and further in view of U.S. 2002/0161666 to Fraki et al. Claims 3 and 5-7 depend from claim 1, and claims 18 and 20-22 depend from claim 16. In view of the above discussion, it is submitted that claims 1 and 16 are allowable, and for this reason claims 3, 5-7, 18 and 20-22 are also allowable at least based on their dependency.

Issue 4: Whether claims 13, 14, 28 and 29 are patentable under 35 U.S.C. 103(a) over Honda in view of Lehikoinen and further in view of U.S. 2004/0027619 to Sato et al.

In section 6 the Examiner rejects claims 13, 14, 28 and 29 as being unpatentable under 35 U.S.C. 103(a) over Honda in view of Lehikoinen and further in view of 2004/0027619 to Sato et al. Claim 13 depends from claim 1, and claim 28 depends from claim 16. In view of the above discussion, it is submitted that claims 1 and 16 are allowable, and for this reason claims 13 and 28 are also allowable at least based on their dependency.

Claim 14 is a method claim that recites, *inter alia*, seeking to retrieve the data item to the first user's mobile device by transfer from another mobile device in said space. The Examiner alleges that, just as with his rejection of claim 1, Honda discloses this limitation at col. 7 ll. 9-17. As discussed extensively above with regards to claim 1, neither this passage nor anything else in Honda discloses anything akin to an interaction between the information source and a mobile device where a mobile device communicates with the source to inform the source of whether it holds a particular item of information. Appellants thus submit that claim 14 is novel and nonobvious over the art on record for the same reasons advanced above with respect to claim 1.

Claim 29 is a device claim to recites, similarly to claim 14, first retrieval means for seeking to retrieve the data item to the first user's mobile device by transfer from another mobile device. Thus, Appellants submit that claim 29 is novel and nonobvious over the art on record for the same reasons advanced immediately above with respect to claim 14.

In view of all the above, Appellants respectfully submit that all pending claims are novel and nonobvious and request the Board to overturn the Examiner's rejection of the claims on appeal and pass the case to allowance.

CONCLUSION

For the many reasons advanced above, Appellants respectfully contend that each claim is patentable and reversal of all rejections and allowance of the case is respectfully solicited.

I hereby certify that this correspondence is being deposited with the United States Post Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

October 12, 2006

(Date of Transmission)

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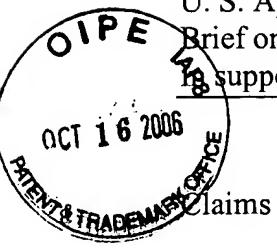
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Attachments



1. A method of retrieving a data item to a mobile device carried by a first user visiting a real-world space, the data item being available from a service system to mobile devices of users visiting the space, the method comprising:

(a) keeping a record on an on-going basis of which mobile devices in said space, if any, hold or are likely to be holding the data item;

(b) seeking to retrieve the data item to the first user's mobile device by requesting transfer only from mobile devices that, according to said record, hold or are likely to be holding the data item; and

(c) in the event that (b) is unsuccessful, retrieving the data item to the first user's mobile device by transfer from the service system.

2. A method according to claim 1, wherein the data item is associated with a location in said space, (b) being initiated as the user approaches or is at that location and including carrying out an enquiry limited to mobile devices that are, or are likely to be, near the first user or said location, to identify a mobile device, if any, holding the data item.

3. A method according to claim 2, wherein said enquiry is limited to mobile devices near the mobile device of the first

user by having that device make the enquiry by using a short-range communications means to ask other mobile devices if they have the data item.

4. A method according to claim 2, wherein said enquiry is limited to mobile devices near the mobile device of the first user or near the location associated with the data item, by monitoring the locations of the mobile devices in said space.

5. A method according to claim 2, wherein said enquiry is limited to mobile devices likely to be near the mobile device of the first user by pre-defining a set of mobile devices which are associated with users belonging to the same visit group.

6. A method according to claim 2, wherein in (b) said enquiry is carried out by the first user's mobile device.

7. A method according to claim 2, wherein in (b) said enquiry is carried out by the service system at the prompting of the first user's mobile device, the service system identifying back to the first user's mobile device at least one device holding the data item where the enquiry identifies any such device.

9. A method according to claim 1, wherein said on-going record keeping comprises tracking at least the first one of:

transfers of the data item from the service system to a mobile device;

transfers of the data item between mobile devices; and

deletions of the data item from a mobile device.

10. A method according to claim 1, wherein said on-going record keeping comprises at least the first one of:

periodically making an inventory of items currently held by each mobile device; and

recording incremental changes to the inventory of each mobile devices as items are added/removed.

11. A method according to claim 1, wherein in (b) said enquiry is carried out by the first user's mobile device.

12. A method according to claim 1, wherein in (b) said enquiry is carried out by the service system at the prompting of the first user's mobile device, the service system identifying back to the first user's mobile device at least one device holding the data item where the enquiry identifies any such device.

13. A method according to claim 1, wherein multiple data items each with a respective associated location in said space are available from the service system, the method further comprising

an on-going process in which said space is treated as divided into zones and, for each zone, the service system causes the mobile devices in the zone to load data items associated with locations in that zone beyond the normal needs of the devices whereby to increase the likelihood of (b) being successfully effected from a mobile device in the same zone as the first-user's mobile device.

14. A method of retrieving a data item to a mobile device carried by a first user visiting a real-world space, the data item being one of a plurality of data items available from a service system to mobile devices of users visiting the space, each one of said plurality of data items having a respective associated location in said space, the method comprising:

(a) seeking to retrieve the data item to the first user's mobile device by transfer from another mobile device in said space; and

(b) in the event that (a) is unsuccessful, retrieving the data item to the first user's mobile device by transfer from the service system; the method further comprising

an on-going process in which said space is treated as divided into zones and, for each zone, upon a mobile device exiting the zone, it transfers the data items it holds that have associated locations in the zone being exited to devices, if any, still in said zone to increase the likelihood of (a) being successfully effected from a mobile device in the same zone as the first-user's mobile device.

15. A method according to claim 1, wherein a transfer effected in (a) is effected using a communications mechanism that is different to that used for a transfer effected in (b).

16. An arrangement for retrieving a data item to a mobile device carried by a first user visiting a real-world space, the data item being available from a service system to mobile devices of users visiting said space, the arrangement comprising:

record means for keeping an on-going record of which mobile devices, if any, hold or are likely to be holding the data item;

first retrieval means for seeking to retrieve the data item to the first user's mobile device by transfer from another mobile device and including enquiry means for carrying out an enquiry limited to mobile devices that, according to said record, hold or are likely to be holding the data item;

second retrieval means for retrieving the data item to the first user's mobile device by transfer from the service system; and

control means for organising retrieval of the data item by first causing the first retrieval means to seek to retrieve the data item and then, if this is unsuccessful, causing the second retrieval means to retrieve the data item.

17. An arrangement according to claim 16, wherein the data item is associated with a location in said space, the arrangement

including means responsive to the user approaching that location to cause the control means to initiate retrieval of the date item, and the first retrieval means including enquiry means for carrying out an enquiry limited to mobile devices that are, or are likely to be, near the first user or said location, to identify a mobile device, if any, holding the data item.

18. An arrangement according to claim 17, wherein the first retrieval means includes short-range communication means forming part of said first user's mobile device, the enquiry means being arranged to use said short-range communications means to ask other mobile devices if they have the data item whereby inherently to limit its enquiry to mobile devices near the mobile device of the first user.

19. An arrangement according to claim 17, wherein said arrangement includes location means for obtaining the locations of the mobile devices in said space, the enquiry means being arranged to use the device locations obtained by the location means to limit its enquiry to mobile devices near the mobile device of the first user or near the location associated with the data item.

20. An arrangement according to claim 17, wherein said arrangement includes set-defining means for pre-defining a set of mobile devices which are associated with users belonging to the same visit group, the enquiry means being arranged to limit

its enquiry to mobile devices likely to be near the mobile device of the first user by making its enquiry only to devices which, according to said set-defining means, are members of said set.

21. An arrangement according to claim 17, wherein said enquiry means is part of the first user's mobile device.

22. An arrangement according to claim 17, wherein the enquiry means is part of the service system and the first retrieval means further includes means at the first user's mobile device for prompting the enquiry means to carry out its enquiry and identify back to the first user's mobile device at least one device holding the data item where the enquiry identifies any such device.

24. An arrangement according to claim 16, wherein said record means is arranged to track at least the first one of:

transfers of the data item from the service system to a mobile device;

transfers of the data item between mobile devices; and

deletions of the data item from a mobile device.

25. An arrangement according to claim 16, wherein said record means is arranged to carry out at least the first one of:

periodically making an inventory of items currently held by each mobile device; and

recording incremental changes to the inventory of each mobile devices as items are added/removed.

26. An arrangement according to claim 16, wherein said enquiry means is part of the first user's mobile device.

27. An arrangement according to claim 16, wherein the enquiry means is part of the service system and the first retrieval means further includes means at the first user's mobile device for prompting the enquiry means to carry out its enquiry and identify back to the first user's mobile device at least one device holding the data item where the enquiry identifies any such device.

28. An arrangement according to claim 16, wherein multiple data items each with a respective associated location in said space are available from the service system, the arrangement further comprising location means for monitoring the locations of the mobile devices, and a zone-based manager that is arranged to treat said space as divided into zones and, for each zone, to cause the mobile devices in the zone to load data items associated with locations in that zone beyond the normal needs

of the devices whereby to increase the likelihood of the first retrieval means being successful in seeking to retrieve said data item from a mobile device in the same zone as the first-user's mobile device.

29. An arrangement for retrieving a data item to a mobile device carried by a first user visiting a real-world space, the data item being one of a plurality of data items available from a service system to mobile devices of users visiting the space, each one of said plurality of data items having a respective associated location in said space, the arrangement comprising:

first retrieval means for seeking to retrieve the data item to the first user's mobile device by transfer from another mobile device;

second retrieval means for retrieving the data item to the first user's mobile device by transfer from the service system;

control means for organising retrieval of the data item by first causing the first retrieval means to seek to retrieve the data item and then, if this is unsuccessful, causing the second retrieval means to retrieve the data item; and

transfer means for executing an on-going process in which said space is treated as divided into zones and, for each zone, upon a mobile device exiting the zone, it transfers the data items it holds that have associated locations in the zone being exited to devices, if any, still in said zone to increase the likelihood of the data item being successfully retrieved from a mobile device in the same zone as the first-user's mobile

device.

30. An arrangement according to claim 16, wherein the first and second retrieval means are arranged to use different respective communication mechanisms for effecting retrieval of said data item.

There is no evidence submitted with the present Brief on Appeal.

U. S. Appln. No. 10/635,925

Brief on Appeal dated October 12, 2006

In support of Notice of Appeal submitted July 6, 2006

Related Proceedings Appendix Page C-1

There are no other appeals or interferences related to the present application.